IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

CRP.No. 3366 of 2001()

AS.18/1994 of SUB COURT, PAYYANNUR
OS.116/1993 of MUNSIFF COURT, THALIPARAMBA

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REVN. PETITIONER:

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1. KARIKKAN CHERIYA KALLYANI,
   W/O.LATE NEELANKOL KUMARAN,
   RESIDING AT KOOVERI AMSOM DESOM.

2. KARIKKAN ASHOKAN, S/O.LATE NEELAMKOL KUMARAN,
   RESIDING AT DO. DO.

3. KARIKKAN ATHMAJA, D/O.LATE NEELAMKOL KUMARAN, DO. DO.

4. KARIKKAN MADHUSOODHANAN, S/O.LATE NEELAMKOL KUMARAN,
   RESIDING AT KOOVERI AMSOM DESOM.

5. KARIKKAN ANILKUMAR, S/O.LATE NEELANKOL KUMARAN,
   RESIDING AT KOOVERI AMSOM DESOM.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS:

PUNNAKKANTAKATH ABDUL HAJEE,
S/O.MOIDEENKUTTY, MERCHANT,
KOOVERI AMSOM, CHAPPARAPPADAVU DESOM,
TALIPARAMBA TALUK.

BY ADV. SRI.P.K.BEHANAN
SRI.STEPHEN MATHEW

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN, J.

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C.R.P. NO. 3366 OF 2001

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DATED THIS, THE 10TH DAY OF JULY, 2007.

O R D E R

Petitioners are the supplementary defendants 2 to 6 in O.S. No. 116/1993 on the file of the Munsiff Court, Taliparamba.

2. The suit was instituted by the respondent/plaintiff for realisation of arrears of rent against the predecessor in interest of the revision petitioners. The case of the plaintiff was that as per the rent deed of the year 1975, plaint schedule premises was rented out to the defendant fixing the rent at Rs. 25/- per month. The rent was paid up to 1984 August and thereafter defaulted. Notice was issued by the plaintiff demanding arrears of rent. Then, up to December, 1989 rent was paid and again the defendant committed default. Hence the plaintiff instituted the suit claiming arrears of rent limiting to three years prior to the filing of the suit. The original defendant died during the pendency of the suit and supplementary defendants 2 to 6 were impleaded. In the written statement filed by the first defendant, it was contended that though the building was rented out by the plaintiff to the defendant in 1975, that building was demolished by the

plaintiff and the present building is constructed in the property of the wife of the defendant. His wife was however, not impleaded in the suit. No documents other than the building tax receipt was produced in support of the contention of the defendant that the building belongs to his wife. On the other hand, the plaintiff produced Ext.A2 registered jenm assignment deed to prove title. It was the specific contention of the plaintiff that an extent of 34 cents of land in R.S. No. 33/2 was assigned by one Yesoda. Ext.A1 is the registration copy of the partition deed entered into between Karikkan Kunhambu and others, in which the wife of the defendant was also a party. Ext.A1 is of the year 1968. As per Ext.A1, D schedule mentioned therein was allotted towards the share of Yesoda, who is the sister of the defendant's wife. It was thereafter that by Ext.A2, Yesoda assigned 34 cents to the plaintiff. In the property assigned to the plaintiff, there was a house. It is the specific contention of the plaintiff that demolition of the property was not done. The main dispute is whether the house situated in the property belongs to the plaintiff or the defendant. As I have already pointed out no title deed was produced by the defendant to show that the building was constructed on the land belonging to his wife. On the other hand, Ext.A1 and A2 are produced by the plaintiff in support of this case. Though the defendant has produced some tax receipts, the same was not accepted by the trial court in the absence of cogent evidence

to show that the disputed property belongs to the defendant. It is admitted by the defendant that in 1975 he took the house on lease, based on a kychit on a rental of Rs. 25/- per month. So if subsequently the defendant had constructed the house of his own or by his wife in any property, necessarily, there should have been some documents to prove the title. The trial court, after analyzing the entire evidence in the case and taking into consideration the admission of DW.1, came to the irresistible conclusion that what was rented out to the defendant was a tiled house belonging to the plaintiff and subsequently it was demolished and reconstructed. As regards the building tax receipts there is a serious dispute as evidenced by Ext.A5, which shows that the plaintiff has filed objection to the assessment of building tax in the name of the wife of the defendant and as per Ext.A5, the Panchayat has decided to change the assessment of the building from the name of the wife of the defendant to the name of the plaintiff and the same has become final. Ext.A7 series is the building tax receipts pursuant to Ext.A5. Ext.A9 is the copy of the order of the Executive Officer dated 3.3.1993 stating that the panchayath decided to continue the assessment in the name of the defendant's wife which was challenged by the plaintiff before the Deputy Director of Panchayath and it was during the pendency of the said appeal that the suit was filed. Therefore, the production of the building tax receipt by the defendant cannot be treated as an

unimpeachable evidence to show any title in favour of the defendant. The circumstances of the case and the admission made by the defendant and the recitals contained in Ext.A3 were taken into consideration by the trial court to hold that the house entrusted to the defendant is the tenanted premises and a decree was passed against which the revision petitioner has filed an appeal. The appellate court re-appreciated the entire evidence on record and agreed with the finding of the trial court.

3. I have gone through the judgment of the the trial court as well as the appellate court and considered the submissions on either side. The present civil revision petition is filed under Section 115 of the Code of Civil Procedure. It cannot be said that the court below has exercised the jurisdiction not vested on it by law nor has failed to exercise the jurisdiction vested in it or has exercised the jurisdiction illegally or irregularly warranting any interference by this Court.

In the circumstances, the civil revision petition fails. It is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. 3366/2001
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O R D E R

10TH JULY, 2007.